

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
) MM Docket No. 99-25
Creation of a Low)
Power Radio Service) RM-9208
) RM-9242

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To: The Commission
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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**CONSOLIDATED COMMENTS
OF
POSITIVE ALTERNATIVE RADIO, INC.
AND
VERNON H. BAKER, ET AL.**

POSITIVE ALTERNATIVE RADIO, INC. ("PAR") and VERNON H. BAKER, VIRGINIA L. BAKER AND EDWARD A. BAKER ("Baker")(hereinafter collectively "PAR-Baker"), by Counsel, pursuant to the *Notice of Proposed Rule Making ("NPRM")*, FCC 99-6 (released February 3, 1999), hereby submits these Comments in the above-captioned rule making proceeding regarding the proposal to create a new low power radio service. In support hereof, PAR-Baker submits the following:

1. PAR is the licensee or permittee of the following full service noncommercial broadcast stations: WPIM-FM (Martinsville, Virginia), WPIR-FM (Hickory, North Carolina), WPAR-FM (Salem, Virginia), WPIN-FM (Dublin, Virginia), WPVA-FM (Waynesboro, Virginia), WPER-FM (Culpeper, Virginia), WCQR-FM (Kingsport, Tennessee), WPIB-FM (Bluefield, West Virginia), WXRI-

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FM (Winston-Salem, North Carolina), WTJY-FM (Asheboro, North Carolina), WJYW-FM (Union City, Indiana), WOKD-FM (Danville, Virginia), and WPCN-FM (Pt. Pleasant, West Virginia).

2. Vernon H. Baker, Virginia L. Baker and Edward A. Baker, individually or through numerous corporations, are the owners and operators of the following sixteen (16) AM-Daytimer stations: WSGH-AM (Lewisville, North Carolina), WNOW-AM (Mint Hill, North Carolina), WAMN-AM (Green Valley, West Virginia), WFTK-AM (Wake Forest, North Carolina), WKNV-AM (Fairlawn, Virginia), WBGS-AM (Pt. Pleasant, West Virginia), WOKU-AM (Hurricane, West Virginia), WOKT-AM (Cannonsburg, Kentucky), WCXN-AM (Claremont, North Carolina), WKDI-AM (Denton, Maryland), WKTR-AM (Earlysville, Virginia), WPIN-AM (Dublin, Virginia), WFIC-AM (Collinsville, Virginia), WCBX-AM (Bassett, Virginia), WKEX-AM (Blacksburg, Virginia) and WMPO-AM (Middleport, Ohio). As the owner and operator of so many AM daytimer radio stations, Baker has experienced first-hand the frustrations and problems of trying to provide adequate radio coverage to the community of license on a full-time basis.

3. There is common attributable ownership between PAR and Baker.

4. As will be shown herein, PAR-Baker believes there is some merit to the creation of a new low power radio service in some areas of the country. However, PAR-Baker believes that these matters must be carefully addressed, and that the integrity of the broadcast signals of all current full power radio stations, as well as any associated FM translator stations, should not be

compromised. PAR-Baker believes that the NPRM proposes to relax the technical protection standards between stations more than is prudent, but that the Commission can still institute a modest new low power radio service by maintaining significant first and second adjacency protection standards. PAR-Baker would like to take this opportunity to provide comments on this, and other, aspects of the NPRM.

5. At the outset, PAR-Baker recognizes that the Commission is trying to afford more broadcast opportunities to those persons and entities that are currently precluded from broadcasting for financial, spectrum scarcity and other reasons. However, the Commission must balance these goals with its historic responsibility of maintaining adequate technical protection to existing service but not precluding additional allotments or assignments by protecting vast areas not actually served. *See, FM Broadcast Stations, 66 RR 2d 338 (1989).*

6. Spectrum Considerations: The Commission's stated decision not to designate a particular FM frequency or frequencies for one or more low power services is prudent. PAR-Baker strongly believes that no current full service broadcast licensee or permittee, or FM translator or booster licensee or permittee should be forced off-air or displaced to a new frequency as the result of the institution of any new low power radio service.¹ Although many

¹ Although the current FM translator service has a "secondary status" vis-a-vis full power radio stations, if the Commission implements low power radio service then all current FM translator licensees or permittees should be afforded "primary status" vis-a-vis the new low power radio stations so that no FM translator licensee or permittee is displaced or terminated as the result of the implementation of new low power radio service, and such FM translator stations should not now be required to originate any local programming.

current secondary radio service providers assumed certain regulatory risks in applying for, and then constructing, their new facilities, it would be patently unfair -- and a violation of due process -- if current FM translator or booster operators were forced off-air as the result of retroactive application of new rules. PAR -- and many others -- have invested thousands of dollars in the FM translator services and the Commission should not now deprive these broadcasters from continuing the valuable radio services that they have provided.

7. The Commission's NPRM seeks comment on the kind of status that should be afforded any new low power radio service that is authorized in this rule making proceeding. The Commission proposes to authorize both 1,000 watt stations and 100 watt stations, otherwise referred to as LP1000 and LP100. PAR-Baker believes that LP1000 stations should be afforded primary status and be required to comply with all day-to-day regulations now imposed upon full service broadcasters/², but that LP100 (and any LPFM stations below 100 watts) should only be afforded secondary status with minimal day-to-day regulatory requirements. The Commission should not lose sight of its goals with respect to low power radio service -- to afford currently deprived persons and entities the opportunity to provide *localized* radio service. If small LP100 and microradio stations are overly burdened with government regulations, it will be difficult (if not impossible) for these stations to survive. The Commission

² For example, LP1000 stations should be required to maintain a properly located Main Studio, maintain a Public File, file FCC ownership reports and compile Quarterly Issues-Programs Lists -- to name just a few.

must be careful not to create so much new competition amongst these new LPFM stations that many of them will not be able to survive. Also, the Commission must take steps to ensure that these new stations are real broadcast stations, and not so informal as to be considered Citizen Band Radio style stations.

8. LPFM should be primarily a noncommercial service: Paragraph number 24 of the NPRM questions whether LPFM should be restricted to noncommercial applicants, be open to commercial service, or both. With the exception of providing long overdue relief to AM-Daytimer broadcasters, PAR-Baker believes that, if the Commission truly wants to create new broadcast opportunities for persons or entities now deprived from providing broadcast service, it must avoid the chilling effect that the commercial service, auction selection process would invariably create. As the result of the commencement of the auction selection process for new full service broadcast opportunities, small businesses and minorities are likely to be shut out of most such opportunities. While the Commission has not yet finalized its auction rules for full service commercial broadcast opportunities, it is a reasonable assumption that deep-pocketed parties will out bid smaller businesses and minorities on most opportunities. Money should not dictate who is going to provide LPFM service. The Commission should not repeat the regulatory mistakes that now pervade full service broadcasting, with several deep-pocketed companies owning and operating hundreds of broadcast stations, thereby resulting in the Commission and the Department of Justice instituting more and more inquiries

with respect to market dominance and unfair competition.

9. The only fair way for small groups and minorities to be afforded an opportunity to commence LPFM service would be for the service to be noncommercial. AM-Daytimer broadcasters should be permitted to swap their marginal AM nighttime frequency for an LPFM frequency without the requirement of an auction fee or any other regulatory fee.³ By keeping LPFM noncommercial (or fee-free for AM-Daytimers) there would be no auction fees to chill applicants, or regular regulatory fees to burden the financial well-being of these small-time broadcasters. And, there would be more emphasis on community-oriented programming rather than commercial enterprise programming.

10. Equipment certification: In paragraph number 35 of the NPRM, the Commission questions whether there should be an FCC transmitter certification requirement for LPFM and microradio service. The answer must be "yes."

³ In RM-9419, the Commission recently invited public comments regarding a proposal to amend Sections 74.1231, 74.1232, 74.1233 and 74.1284 of the Commission's Rules to allow AM licensees to become licensees of FM translators and to use them to retransmit their signals as fill-in service. PAR-Baker believes that RM-9419 should be consolidated with this proceeding, and that AM-Daytimers be afforded an automatic right to swap their AM frequency for a LPFM frequency that would provide better service to the community, where applicable. For years, AM-Daytimers have been deprived of any tangible relief, and this proceeding can easily resolve their plight.

Since most AM Daytimers will have more daytime coverage than an LPFM station could provide (but have only ridiculously low nighttime power authority), the Commission should agree to permit such AM Daytimers the right to broadcast at night on a new LPFM frequency. This will not only provide much need help to the longstanding plight of AM Daytimers, but also remove much of the nighttime interference to other full time AM stations.

PAR-Baker believes that all low power radio service providers must be subject to strict type-accepted equipment requirements and concomitant FCC-inspection requirements to maintain the integrity of the broadcast business. The mere fact that the Commission is proposing some relaxation of the technical protection standards in this proceeding further warrants the need of type-accepted equipment to minimize as much as possible the threat of technical interference to current broadcasters./⁴

11. Interference Protection Criteria: In paragraphs numbered 38-50 of the NPRM, the Commission offers several ideas regarding interference protection criteria that could be implemented for LPFM. In developing interference criteria for any LPFM service which may be created as the result of this proceeding, it is imperative that appropriate steps be taken to adopt interference criteria which fully protect existing primary status stations, while also preserving the ability of such stations who have not already done so to improve their facilities to the maximum permitted for their class and insuring efficient spectrum utilization. In order to accomplish this goal, it will be necessary to adopt protection requirements which prohibit any class of LPFM station which would have primary status from either receiving or causing any

⁴ The Commission must remain mindful of the fact that current FM translator and booster stations must operate in strict compliance with various technical rules and requirements, or they face the wrath of other broadcasters who can request the Commission shut them down. With respect to LPFM, the Commission must maintain the regulatory authority to shut these new stations down if their operations are non-compliant and/or cause electrical interference with other full power and low power broadcasters. If the Commission is not ready to "police" this new broadcast service, then it should not be implemented.

interference, based on the assumption that the LPFM station and all other stations requiring protection consideration operate with the maximum facilities permitted for their class. Any class of LPFM station which has secondary status, however, should be permitted to receive interference but be prohibited from causing interference, either predicted or actual, to the actual operating facilities of any other station requiring protection consideration, similar to the scheme presently employed for other secondary services, such as FM and TV translators and LPTV.

12. Spacing Criteria is Preferred: The spacing criteria proposed in the NPRM for interference protection appears to be the best approach to meet the criteria outlined above, particularly for any class of LPFM station which would have primary status. In addition to its simplicity, it offers the benefit of preserving the rights of both the LPFM station and other stations requiring protection consideration to operate with the maximum facilities permitted for their class if they are not already doing so. This approach has also historically been successful in minimizing or preventing inter-station interference in the FM band. Given the desire stated in the NPRM to simplify the authorization of LPFM facilities while still preventing interference to other stations, contour protection and the use of directional antennas should not be permitted under any circumstances in any LPFM service which is authorized as the result of this proceeding. This is particularly critical for any class of LPFM stations which might be given primary status. To do so would unnecessarily increase the risk of interference and also increase both the cost and complexity of implementing

LPFM service, due to both the cost and complexity of conducting contour protection studies and the cost and complexity of properly implementing directional operation in the FM band. Improperly implemented FM directional antennas installed by unqualified personnel in an effort to cut costs would significantly increase the risk of interference to other facilities requiring protection consideration.

13. Second and Third Adjacent Channel and IF Protection: While the Commission proposes to eliminate second and third adjacent channel protection requirements, PAR-Baker believes that at least second adjacent channel protection standards should be maintained for any power level employed by LPFM stations. Given the higher potential for interference associated with the proposed LP1000 class, PAR-Baker believes that it is also necessary to maintain third adjacent channel protection requirements for any LPFM station operating with a power exceeding 100 watts. At a bare minimum, if further studies determine that third adjacent channel interference caused by LPFM stations is of no concern, spacing requirements must be adopted to prevent any class of LPFM station which has primary status from receiving interference from higher powered stations operating on third adjacent channels, which is a very real possibility in a situation where a 1000 watt or lower LPFM facility would be located in close proximity to a third adjacent channel station operating with powers 50 to 100 times greater than that employed by the LPFM station. Similarly, since intermediate frequency interference is much more destructive, potentially impacting every FM station in an area (regardless of the frequency

on which they operate), it is imperative that IF protection standards be established for any LPFM station which operates with a power exceeding 100 watts.

14. Preclusion Issues: The adoption of any LPFM service which includes stations having primary status must include provisions, similar to those presently employed in FM rule making proceedings, to permit involuntary frequency changes by LPFM stations in order to accommodate upgrades and other modifications by other stations when it can be shown that the public interest would be served by the proposed package of modifications. Failure to do so would run counter to the public interest by unnecessarily having a potential preclusive impact on such upgrades and could also have the undesirable effect of promoting abusive practices, such as encouraging the filing by another party of an LPFM application whose sole purpose is to attempt to block a potential upgrade by a competitor. To insure sufficient flexibility in site selection, full power FM stations should also be permitted to employ the provisions of Section 73.215 of the FCC Rules (the contour protection rules), including the use of directional antennas, to meet the protection requirements to primary status LPFM stations, due to the additional FAA and zoning obstacles which are normally encountered in siting the taller towers which are required for full power FM stations.

15. Ownership and Eligibility: PAR-Baker takes issue with the Commission's proposal not to permit LPFM opportunities to be open to persons or entities with an attributable interest in any full power broadcast station.

First, PAR-Baker strongly believes that AM-Daytimers should be afforded the highest preference possible to receive an LPFM license if there is an LPFM frequency available in the same market, and if the LPFM service would improve that broadcaster's nighttime service to its market.⁵ In other circumstances, where a LP1000 station would provide better service than some full power AM or FM stations currently provide, those current broadcasters should receive a preference in obtaining the LPFM station. Therefore, in these situation, the existing broadcaster should be permitted to apply for a LPFM station in the same area if that broadcaster promises to divest its current station prior to commencing operations on the LPFM station. Second, current broadcasters should be permitted to apply for LPFM stations in areas outside their current broadcast market(s). While PAR-Baker understands that Commission's concern that certain persons or entities could monopolize or unduly control a certain market with a combination of full service broadcast stations and LPFM stations, there should be a distance-buffer established by which current broadcasters could apply for LPFM stations. For example, an LPFM application could require a certification question whereby the applicant certifies that it holds no attributable ownership interest in any full power broadcast license or

⁵ As PAR-Baker has noted hereinabove, AM-Daytimers should be afforded an automatic right to swap their AM frequency for an LPFM frequency in situations where an available LPFM frequency would provide better coverage to the community than the AM frequency, or be afforded the opportunity to abandon their AM nighttime frequency (if it is so restricted that only marginal coverage may be provided, especially less than full service to the community of license) in return for an LPFM frequency at night so that the public interest would best be served both daytime and nighttime.

construction permit within 20 or 25 miles of its proposed transmitting site./⁶

16. Cross-ownership regulations: In paragraph numbered 58 of the NPRM, The Commission asks whether newspapers, cable systems or other mass media should be permitted to own LPFM stations. PAR-Baker believes that the Commission should enforce its cross-ownership rules consistently with those that apply to full service broadcast stations. Inasmuch as those regulations are currently under review, the scope of these regulations should include equal treatment for LPFM stations.

17. Although the Commission questions whether there is a need for a national ownership cap on LPFM stations, PAR-Baker believes such a cap is necessary so that the LPFM service is not overwhelmed by the same companies that went into a buying frenzy after implementation of the 1996 Telecommunications Act -- an act that simply accentuated the need for LPFM service since full service broadcasting is quickly becoming an exclusive club that small businesses and minorities cannot afford to join. The Commission should not make the same mistake again. And, PAR-Baker believes there is merit to a national ownership cap on LPFM stations, whereby one person or

⁶ The Commission proposes that no person or entity could own more than one LPFM station within the same community or market. However, these terms are ambiguous and subject to inequality. The Richmond, Virginia market is much larger than the Fredericksburg, Virginia market, and it could be possible for the same person or entity to own two LPFM stations within the Richmond market, with those stations more than 75 miles apart point-to-point. Also, a distance ownership criteria would be easier to implement and subject to less interpretative controversy.

entity could not own more than a certain number of LPFM stations.⁷ A mileage distance-buffer rule combined with a national ownership cap would be a reasonable compromise so that this new low power service is implemented in accord with the fundamental principles of due process.

18. Licensing Criteria: In paragraphs numbered 61 and 62 of the NPRM, the Commission questions whether LPFM operators should be required to be residents of the communities that they propose to serve. PAR-Baker does not believe such a requirement is prudent. All broadcasters must remain responsive to the interests and needs of the local community for their stations to succeed. There are many broadcast stations owned by non-locals that provide exceptional service to their communities of license. Besides, the courts have already struck down this type of requirement for full power stations, and there is no documented justification for doing anything different here. *See, Bechtel v. FCC, 957 F.2d 873 (D.C. Cir. 1992).*

19. With respect to alien ownership, PAR-Baker believes that all LPFM stations should be subject to the statutory restrictions on alien ownership that are enumerated in Section 310(b) of the Communications Act. Likewise, the character qualifications requirements currently imposed on all full power broadcasters should apply to LPFM broadcasters, as well.⁸

⁷ PAR-Baker also believes that a person or entity should not be permitted to own more than one LPFM station within a certain geographically defined area, except for an AM Daytimer that is granted a nighttime LPFM station to provide nighttime coverage to the community of license of its AM station.

⁸ PAR-Baker applauds the Commission in taking the position that any "pirate" radio operators that does not immediately cease and desist its illegal

20. Service characteristics: In paragraph number 68 of the NPRM, the Commission questions whether there should be a minimum local origination requirement imposed upon LPFM broadcasters. PAR-Baker does not believe that the Commission should intrude upon the editorial judgment of LPFM broadcasters. Rather, the Commission should impose the same basic programming requirements that full power broadcasters face -- namely, LPFM broadcasters should be required to prepare Quarterly Issues-Programs Lists, which would serve as their "track record" at time of license renewal. If the Commission were to impose a quantitative programming requirement upon LPFM broadcasters, then the Commission would be required to allocate the requisite staff to oversee this new service. Such a scenario seems contrary to the simplistic, hands-off goal this new service is supposed to embody.

21. Miscellaneous regulations: PAR-Baker believes that LP1000 stations should be required to broadcast full time, twenty-four hours each day. With respect to LP100 and microradio stations, they should be subject to time-share operations if they are not operated twenty-four hours each day. Since the goal of LPFM is to bring new voices into the marketplace, no LPFM broadcasters should be permitted to warehouse spectrum by operating only part-time. While LP1000 stations should be required to participate in the EAS system, LP100 and microradio stations should not be so required. PAR-Baker believes that all LPFM stations should be required to broadcast regular station identifications.

operations will be disqualified from applying for, owning and operating LPFM broadcast stations.

22. The Application Process: Although the Commission's NPRM generally suggests that the application process for LPFM be simple and expedient, PAR-Baker cautions the Commission not to rush this process along in such a manner as to invite sloppy and incomplete applications. If the Commission truly wants to bring this new radio service into market as quickly as possible, it would be prudent to adopt a "hard look" processing standard -- applications must be substantially complete and accurate or risk automatic dismissal with prejudice.

23. PAR-Baker is not opposed to a filing window system that permits only a few days for the filing of applications so long as the filing window itself is announced at least 45 to 60 days ahead of the opening of the window. Most applicants need at least 45 days to secure a transmitter site and prepare the requisite engineering statement. If the Commission were to announce surprise filing windows with little opportunity for an applicant to prepare its application, then the Commission will be faced with many applications that specify impermissible sites, or theoretically permissible sites but nonetheless not available to that applicant. It would seem that the last thing the Commission wants to do here is rush the application filing process, only to see hundreds of post-grant modification applications to "clean-up" rushed applications. If the Commission has learned anything from its past, the requirement of substantially complete applications works to everyone's benefit.

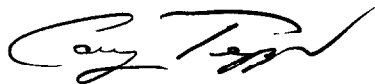
24. Finally, the Commission seeks comments on how to resolve mutually exclusive applications. If the Commission agrees with PAR-Baker and

implements a noncommercial-only LPFM service/⁹, then a lottery or arbitration selection process should be adopted. If a lottery process is adopted, PAR-Baker believes that preferences should be awarded for applicants that are small businesses or minorities, and for maximization of spectrum using an areas and population comparison of proposed service.

WHEREFORE, the foregoing premises considered, PAR-Baker would welcome the institution of LPFM broadcast service in the manner set forth in these Comments.

Respectfully submitted,

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and
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⁹ However, as PAR-Baker explains hereinabove, any LPFM licensed to an AM Daytimer for the purposes of providing relief from the poor quality, limited AM signal coverage should not be restricted as a noncommercial service.